IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

SA.No. 632 of 1997(A)

AS.22/1990 of SUB COURT,KOTTARAKKARA
OS.112/1986 of MUNSIFF COURT, PUNALUR
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APPELLANT/APPELLANT- DEFENDANT

STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, KOLLAM.

BY GOVERNMENT PLEADER SMT.LAKSHMI RAVI

RESPONDENTS:

RETNAMMA, D/O.GOVINDA PILLAI, RETNAVILASOM, CHEMMANTHOOOR, FROM VATTUTHADATHIL PUTHEN VEEDU PUNALUR.

BY ADV. SRI.V.N.ACHUTHA KURUP

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON 01/02/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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S.A NO.632 OF 1997

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Dated this the 1st day of February 2007

JUDGMENT

State is the appellant. Respondent is the plaintiff. Respondent filed O.S.112/86 on the file of Munsiff Court, Punalur claiming a decree for declaration of her title perfected by adverse possession and permanent prohibitory injunction. It was contended by respondent that plaint schedule property, having an extent of 20 cents has been in the uninterrupted possession of the family of the respondent for more than 100 years and it was also divided among other properties in the partition and was allotted to the respondent under Ext.A1 settlement deed dated 25.9.67 and therefore she is entitled to a decree for declaration of title and consequential injunction. Appellant filed a written statement admitting that respondent and her predecessor have been in possession of the plaint schedule property for more than 50 years, though it

was contended that the said possession was not adverse. Learned Munsiff on the evidence granted a decree as prayed for. It was challenged before Sub Court, Kottarakkara in A.S.22/90. The appeal was filed with I.A.740/90, an application under section 5 of the Limitation Act, to condone the delay of 690 days in filing the appeal. Learned Sub Judge as per order dated 13.12.96 holding that no evidence was adduced to establish sufficient reason to condone the delay, dismissed the application. Consequently the appeal was dismissed. This Second Appeal was filed challenging the dismissal of the appeal and the order in I.A.749/90, raising a contention that learned Sub Judge should have condoned the delay.

2. Learned counsel appearing for appellant and respondent were heard.

3. Relying on the decision of the Apex Court in **Collector, Land Acquisition Anantnag v. Katiji (AIR 1987 SC 1353)** learned Government pleader argued

that the State represents the collective cause of the community and does not deserve a litigant non grata status and the reason for delay in filing the appeal was the necessity to get opinion from different departments as only the State was impleaded in the suit and therefore liberal approach should have been taken and the delay should have been condoned and the appeal should have been admitted. Learned counsel appearing for respondent argued that no valid reason, much less sufficient reason was shown for the delay and administrative delay by itself is insufficient to condone the delay and learned Sub Judge rightly dismissed the application and consequently the appeal.

4. True, while considering an application to condone the delay under section 5 of Limitation Act court has to bear in mind that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone the delay can result in a meritorious matter being thrown out at

the threshold resulting in miscarriage of justice. It is also true that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and there is no presumption that delay is occasioned deliberately or on account of culpable negligence. It is also true that the State is entitled to get equal treatment, just like any other litigant and there is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. It may be true that because of the bureaucratic methodology whereby files are being pushed from one table to the other, some delay is caused. But these are not grounds to allow an application filed under section 5 of Limitation Act for the reason that State is the party.

5. The question is whether the application filed discloses sufficient cause for the delay. The judgment was pronounced on 29.2.88 and copy application was filed on 3.3.88 and the certified

copy was received on 26.9.88. The appeal was filed only on 10.8.90, after delay of 690 days. The question is whether there is any explanation for the delay from 23.10.88, the date on which the appeal should have been filed after receiving the certified copy on 26.9.88, till 10.8.90 when the appeal was infact filed. Though paragraph 3 of the affidavit filed by the Additional Government pleader it is stated that records and reports had to be obtained from different departments , they do not relate to a stage subsequent to the date of the decree but only the stage before the filing of written statement. The only reason shown in the affidavit for the delay from 23.10.88 to 10.8.90 reads:-

> "There happened some delay in filing this appeal. Purely on the basis of administrative reasons. There are no deliberate omission or laches on the

part of State of Kerala in filing the appeal."

It is seen that the affidavit of the Additional Government pleader accompanying I.A.749/90 was attested on 10.7.90. Still the appeal was filed only on 10.8.90. It is not known why the appeal was filed, though it was ready on 10.7.90, immediately thereafter. In the absence of sufficient reason justifying the delay warranting condonation of the delay, I do not find any illegality committed by the learned Sub Judge in dismissing the application to condone the delay.

6. To find out whether appellant has a meritorious case to be advanced in the appeal, trial court records which were called for, were perused. In the written statement itself it was admitted that respondent and her family were in possession of the plaint schedule property for more than 50 years as claimed by respondent. It was also admitted that the property was included in the partition deed executed by members of her

family. There was no specific pleading that respondent or the predecessors were in permissive possession of plaint schedule property. In such circumstance, there is no case on merits also. This case does not involve any substantial question of law.

Second Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006